IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10484 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASIF @ GANDHARO S/O. SULEMANBHAI SANDHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR MIG MANSURI for the Petitioner.

Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2003

ORAL JUDGEMENT

The petitioner-detenu has challenged the detention order dated 1.8.2002, by which he is detained as a "dangerous person", under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985

("PASA", for short). Along with the detention order, he is served with the grounds of detention. In the said grounds, there is a mention about two criminal cases under various Sections of the Indian Penal Code. There is also a reference about statements of witnesses in the order.

The authority, after having been satisfied about the alleged anti-social activities of the petitioner, has detained the petitioner under PASA.

The learned Advocate for the petitioner submitted that both the cases, referred to in the order, relate to law and order situation and it cannot be said that there is any breach of public order because of the aforesaid cases which are pending against the petitioner. It is submitted that even the statements of witnesses are in connection with some demand of money, etc. It is submitted that, therefore, it cannot be said that there is a breach of public order, for which it is required to detain the petitioner under preventive detention.

It is also argued by learned Advocate for the petitioner that the petitioner has made a representation, through his Advocate, against his detention order. Copy of the said representation dated 20.8.2002, is annexed at page 25. The same is received by the Jail Authority on 21.8.2002. It is submitted that, however, the petitioner has not received any reply till today. The said averment is made in the petition at paragraph 6. Learned AGP submitted that the said representation is decided by the State Government on 26.8.2002 and that the same was despatched on 27.8.2002 to the Jail authority. However, learned AGP is unable to state whether the Jail Authority has communicated the decision to the petitioner or not. Even though the Jail authority is a party-respondent, no affidavit is filed, controverting the averment of the petitioner in the petition, stating that he has not received any communication at all. In view of the averment of the petitioner that he has not received any communication in reply to his representation and further, in view of the fact that there is nothing on record to suggest that the petitioner has really been communicated the said decision by the concerned Authority, the detention order is required to be set aside on that ground alone.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made

absolute.

5th March, 2003 (P.B. Majmudar, J.)

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(apj)